

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

HAWKS' EXPRESS, INC.  
Respondent

Case No.: I-00-11256

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations ("DCMR"). By Notice of Infraction (No. 00-11256) served August 10, 2001, the Government charged Respondent Hawks' Express, Inc. with a violation of 20 DCMR 900.1 which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three (3) minutes while parked, stopped or standing. The Notice of Infraction charged that Respondent violated 20 DCMR 900.1 on July 25, 2001 while parked in the 3100 Block of Mount Pleasant Street, N.W., and sought a fine of \$500.

On August 21, 2001, this administrative court received Respondent's plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension of the authorized fine. In the letter accompanying its plea, Respondent explained that, according to the information sheet served with the Notice of Infraction, "the District of Columbia Environmental Health Administration requests that all vehicle operators

observe the engine idling regulation while visiting the District of Columbia.” (Emphasis in original.) As a result, Respondent contended that its driver should have been the one to receive the Notice of Infraction. Towards that end, Respondent attached to its letter a copy of the driver’s Virginia Department of Motor Vehicles information.

By order dated August 28, 2001, I permitted the Government an opportunity to respond to Respondent’s plea and request. The Government elected not to respond.

## **II. Findings of Fact**

1. By its plea of Admit with Explanation, Respondent Hawks’ Express, Inc. has admitted violating 20 DCMR 900.1 on July 25, 2001 in the 3100 Block of Mount Pleasant Street, N.W.
2. On July 25, 2001, Respondent idled the engine of its truck for more than three (3) minutes while parked in the 3100 Block of Mount Pleasant Street, N.W.
3. Because its driver was present at the time of the admitted violation, and in a bulletin accompanying the Notice of Infraction the Government stated that it “requests that all vehicle operators observe the engine idling regulation while visiting the District of Columbia,” Respondent contends that its driver should have been issued the Notice of Infraction, not Respondent.
4. There is no evidence in the record of a history of non-compliance by Respondent.

### III. Conclusions of Law

1. Respondent violated 20 DCMR 900.1 on July 25, 2001 in the 3100 Block of Mount Pleasant Street, N.W. A fine of \$500 is authorized for a first offense of this violation. 16 DCMR §§ 3201.1(b)(1) and 3224.3(aaa).
2. Respondent has requested a reduction or suspension of the authorized fine. Under these circumstances, a reduction, but not a suspension, of the fine is appropriate. Respondent's contention that its driver should have been issued the Notice of Infraction instead of Respondent is unavailing as a matter of law.<sup>1</sup> 16 DCMR 3201.4 ("An infraction committed by an individual acting as agent, partner, director, officer, or employee of a person shall be considered to have been committed by that person."). Because there is no evidence in the record of a history of Respondent's non-compliance, however, I will reduce the fine to \$425. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553.

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<sup>1</sup> Respondent's reliance on the Government's bulletin to the contrary is misplaced. First, the official text of 21 DCMR 900.1 is contained in the District of Columbia Municipal Regulations, as originally set forth, and amended through publication, in the District of Columbia Register. *See* 21 DCMR 900.1; 32 D.C. Reg. 647 (February 1, 1985); 46 D.C. Reg. 6017 (July 23, 1999); 46 D.C. Reg. 8699 (October 29, 1999); 47 D.C. Reg. 1982 (March 24, 2000); 48 D.C. Reg. 1223 (February 16, 2001); and 48 D.C. Reg. 5909 (June 29, 2001). Where there is conflict between the official publication of a regulation and an unofficial one such as the Government's bulletin, the official publication trumps. *See* D.C. Official Code § 2-553(a) (District of Columbia Register designated as the "only official legal bulletin in the District of Columbia government and the temporary supplement of the District of Columbia Municipal Regulations."). Second, there is no actual conflict in this instance between the official text of 21 DCMR 900.1 and the Government's bulletin. 21 DCMR 900.1 provides that an engine of a motor vehicle "shall not idle for more tha[n] three (3) minutes while the motor vehicle is parked, stopped, or standing" except in certain circumstances not relevant here. Nowhere in the regulation is this prohibition limited to vehicle operators, to the exclusion of those who might employ them. *See* 16 DCMR 3201.4. Moreover, the Government's bulletin clearly provides that "[a]ny organization that *owns and/or operates* a vehicle seen violating this regulation will be issued a civil infraction ticket for \$500." (Emphasis supplied). As such, Respondent was properly charged in the Notice of Infraction with violating 21 DCMR 900.1.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a fine in the total amount of **FOUR HUNDRED TWENTY-FIVE DOLLARS (\$425)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**FILED                      05/25/02**

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Mark D. Poindexter  
Administrative Judge